

REMARKS

Applicant wishes to thank the Office for the interview conducted April 3, 2000 by Supervisory Primary Examiner John Weiss with Examiner Dennis Ruhl and the undersigned. During the interview, the Office agreed that the finality of the Office Action now addressed would be withdrawn upon filing of this present Reply, which in turn would be entered in full. Applicant appreciates this consideration. Although no complete resolution of matters was reached in the interview, several points of compromise were reached. Each will be addressed as appropriate further herein.

Claims 2 through 8 stand rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim that which Applicant regards as the invention. The Office has indicated, however, that the rejection of claim 8 will be withdrawn, leaving only claims 2 and 5 in actual dispute. In particular, the Office Action questions how, if in claim 1 the bacterial filter is recited as being interposed the canister and pump, the bacterial filter may be recited in claim 2 as being within the canister. As discussed in the interview and acknowledged by Mr. Weiss, the recitation of claim 1 defines the relation of these elements from a functional point of view. In other words, the recitation merely states that the filter is "interposed," in the fluid flow, between the pump and canister. The recitation of claim 2, on the other hand, speaks to the "location" of the filter with respect to the canister. There is no inconsistency between the recitations; in fact, the recitations closely describe the structure and functional relationship of the components as shown in the drawing figures accompanying the specification. Withdrawal of the rejection is therefore respectfully requested.

Claim 5 stands rejected under §112 for failing to set forth antecedent basis for the interior of the porous pad. Although Applicant maintains its previous traversal of this rejection, claim 5 has nonetheless been amended to obviate the issue. No new matter has been added and, as amended, antecedent basis for the interior clearly exists. Entry of the amendment and withdrawal of the rejection is therefore respectfully requested.

Claims 1, 3 through 6 and 9 through 12 stand rejected under 35 USC §102(e) as being anticipated by U.S. patent No. 5,466,229 issued November 14, 1995 to Elson *et al.* ("Elson"). Although Applicant

maintains its previous traversal of this rejection, claim 1 has nonetheless been amended to recited that the bacterial filter comprises a 0.2 micron hydrophobic membrane filter. No new matter has been added; entry of the amendment is therefore respectfully requested. As the added structure is clearly not found within Elson, withdrawal of the rejection is respectfully requested.

Claim 7 stands rejected under 35 USC §103(a) as being unpatentable over Elson in view of U.S. patent No. 5,437,651 issued August 1, 1995 to Todd *et al.* ("Todd"). Although claim 7 is now allowable as depending from claim 1, Applicant nonetheless respectfully reiterates its objection to the citation of Elson under §103, Elson being neither analogous to the art of the invention nor pertinent to the problem faced by Applicant. In the interview, it is noted that the Office stated its position that this argument is "generally seen in traversal of secondary references and is not appropriate in attacking a primary reference." This proposition being supported by no statute or judicial decision, Applicant disagrees with the Office's position. The pertinent art must be determined from the point of view of one of ordinary skill in the art at the time the invention was made based upon the particular problem faced. It is clearly improper to narrow the problem to the differences between a reference from non-analogous art and the invention as claimed and then ask what is the problem faced by Applicant. In other words, Applicant had to first arrive at the structure of Elson before considering the appropriate filters and the like necessary for the recited invention. It is improper to *assume* that one of ordinary skill in the art would have started with the Elson structure. This is simply not true and, further, has not been in any manner shown by the Office.

Claims 14 and 15 stand rejected under 35 USC §103(a) as being unpatentable over U.S. patent No. 4,460,361 issued July 17, 1984 to Nichols ("Nichols") in view of U.S. patent No. 3,804,090 issued April 16, 1974 to Holbrook ("Holbrook"). Additionally, claim 15 stands rejected under 35 USC §103(a) as being unpatentable over Nichols in view of U.S. patent No. 5,234,419 issued August 10, 1993 to Bryant *et al.* ("Bryant"). Although Applicant maintains its previous traversals of each rejection, Applicant has nonetheless cancelled claims 9 through 12, 14 and 15, without prejudice, in order to expedite the present prosecution. Applicant intends, however, to present claims of similar scope at a later point in the

present prosecution or in a continuing application. As a result, Applicant in no way now concedes to the rejections.

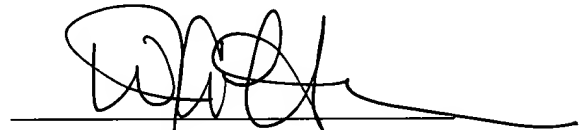
Finally, claim 13 has been amended to correct a minor typographical error and new claims 16 through 26 have been added to more fully protect the invention of the present application. No new matter has been added. Entry of the amendment and each new claim are therefore respectfully requested.

In light of all the foregoing, Applicant respectfully requests reconsideration and allowance of the claims and passage to issue of this present application.

Respectfully submitted,

Dated: 07/19/2000

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A handwritten signature in black ink, appearing to read 'WJ Colton', written over a horizontal line.

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